October Term, 1979

No. 79-7

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, ET AL.,

Appellants,

v.

JUDITH JAVA, ET AL.,

Appellees.

On Appeal from the United States District Court for the Northern District of California

BRIEF ON MERITS OF THE STATE OF MARYLAND, AS AMICUS CURIAE

Francis B. Burch,
Attorney General of Maryland,

Louis B. Price,
Special Assistant Attorney General of Maryland,
1200 One Charles Center,
Baltimore, Md. 21201,
For State of Maryland,
Amicus Curiae.

James N. Pierpaw,
100 N. Eutaw Street,
Baltimore, Md. 21201,
General Counsel, Maryland Department of Employment Security,
Of Counsel.

The Daily Record Co., Baltimore, Md. 21203

Table of Contents

	PAGE
Interest of the Amicus	1
Argument:	
I. Under the existing state-federal excise tax supported benefit program the question concerning prompt payment of benefits "when due" can safely be left to supervised state control	2
II. Affirming the action of the District Court will cause untold confusion in that "when due" under the statute of every state will become a potential constitutional question	5
Conclusion	6

Table of Citations

Cases

Carmichael v. Southern Coal Co., Carmichael v. Gulf States Paper Corporation, 301 U.S. 495 (1937)	3
Dandridge v. Williams, 397 U.S. 471 (1970)	5
Goldberg v. Kelly, 397 U.S. 254 (1970)	3
Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)	5

Statutes

California Unemployment Insurance Code, California Statutes, 1953, Section 1335	6
Maryland Unemployment Insurance Law, Maryland Annotated Code, Art. 95A, Section 8	2
1935 Social Security Act, 49 Stat. 626, 42 U.S.C., Sections 301-1305	2, 3
P. L. 91-373	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, ET AL.,
Appellants,

v.

JUDITH JAVA, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF ON MERITS OF THE STATE OF MARYLAND, AS AMICUS CURIAE

INTEREST OF THE AMICUS

The State of Maryland has heretofore filed a brief as amicus curiae in this Court in support of California's jurisdictional statement. The interest of the amicus as set forth in that brief fully supports Maryland's filing of this supplemental brief advancing specific recommendations to the Court.

ARGUMENT

I.

UNDER THE EXISTING STATE-FEDERAL EXCISE TAX SUPPORTED BENEFIT PROGRAM THE QUESTION CONCERNING PROMPT PAYMENT OF BENEFITS "WHEN DUE" CAN SAFELY BE LEFT TO SUPERVISED STATE CONTROL.

The Unemployment Insurance Compensation Program in every jurisdiction that operates under the provisions of the Social Security Act[1] and under the aegis and with the approval of the Secretary of Labor is an insurance program designed to assist in the maintenance of purchasing power. This is accomplished by the collection of an excise tax from employers and the payment of benefits to *eligible* claimants. Eligibility consists of earnings in proper base period amounts, reasons for leaving employment, and diligent job seeking while unemployed.

In most, if not all, jurisdictions there is a direct relationship between the rate at which the tax is paid by each employer and the amount of benefits received by claimants whose monetary eligibility was earned by working for that employer. In Maryland all benefits paid to claimants are charged against the base period employer regardless of the reason for separation from employment.[2]

It is obvious that the community has a direct interest in the prompt payment of benefits to persons who are fully eligible under the law; and that the employer has a critical interest in denial of benefits where the claimant is not fully eligible, or becomes unemployed for a disqualifying reason.

---

[1] Act of August 14, 1935, c. 531, 49 Stat. 620, as amended, 42 U.S.C. §301-1305.

[2] (Unemployment Insurance Law of Maryland) Laws of Maryland, Second Extraordinary Session, Dec., 1936, c. 1, Maryland Ann. Code, Art. 95A, Section 8 (1969).

The law never has contemplated anything approximating universal coverage. Recent legislation affecting federal standards applicable to the states[3] will compel coverage of an additional four to five million persons under state programs, but this still leaves approximately seventeen million persons who render services in the United States for wages uncovered.

From the beginning there has been the exemption of particular classes of employers from the tax, and the resulting exemption of their employees from the benefits of the statutory scheme. See *Carmichael v. Southern Coal Co., Carmichael v. Gulf States Paper Corporation,* 301 U.S. 495 (1937).

In the case of *Goldberg v. Kelly,* 397 U.S. 254 (1970), each claimant was a recipient of a welfare award made to all persons similarly situated on a "needs" basis. Such benefits are financed out of the general revenue, and do not reflect adversely upon specific taxpayers. The only persons in interest in a claim dispute are the State and the claimant.

Equation of these programs for purposes of statutory construction or application of constitutional standards is not possible.

The thrust of the District Court opinion is that (1) the California law as applied is inconsistent with federal statutory requirements and (2) is violative of the United States Constitution. There is no finding by the Court that the Federal law[4] is unconstitutional. Presumably, the difficulty is that the legislature of California has created a system whereby the first determination (based largely on interview of the claimant) is peremptory in nature and where that proceeding is concluded favorable to the claimant, the

[3] P.L. 91-373.
[4] 42 U.S.C. §301-1305.

second hearing (the Referee) is often the first proceeding at which the facts favorable to the position of the employer are fully revealed and explored, and this after an average time of seven weeks.

Whether or not this particular compromise between immediate payment in all cases and the withholding of benefits until all appeals are exhausted is sound and productive of the result sought through applicable legislation is debatable. The average time will vary from state to state, and from place to place within a state. The important point is that the Congress imposed specific "lead" responsibility for insuring prompt payment "when due" upon the Secretary of Labor of the United States. There is no showing that the Secretary is incompetent in this respect.

The practice in California is obviously one of long and continuous standing, and with some variations is substantially followed throughout the nation, and has been for some thirty-five years. Weight must be given to long, continuous and unchallenged administrative practices in matters of statutory construction and application of constitutional sanctions.

The Appellee apparently convinced the District Court that the California law is an unwise law. The practice of permitting a median seven-week delay in the payment of benefits in certain cases was attacked. From a philosophical point of view, constitutional abnegation was reasoned.

We submit that the question ought not to be whether the California law is wise or unwise. The courts do not sit as super-legislative bodies. The Constitution ought not to be treated as an instrument to plug the leak in the dike whenever the Court feels that the spirit of a statute is not

being carried out. See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

If the federal statute in question is valid and constitutional, and we have seen no challenge thereto, then the problem presented by this case ought to be initially approached from the point of view of enforcing that statute according to its terms and meaning rather than through disruptive sanctions based upon due process constitutional violation. We submit that if the crux of the problem is a conflict between the federal statute and the state statute and regulations promulgated pursuant thereto, great efforts should be expended by the judiciary to attempt to adjudicate the problem from the statutory approach of conformity of the state law to the federal standards envisioned by Congress with judicial invalidation of the state statute on constitutional grounds of due process infringement as an avenue of last resort. Admittedly, a state's administration of its unemployment insurance program, when under attack by any individual directly affected thereby, must withstand both statutory and constitutional judicial scrutiny; however, judicial concern for an individual's rights when couched in terms of the Fourteenth Amendment due process deprivation should be tempered with equal concern in not unduly extending the constitutional argument in evaluating a state statute complementing a federal statutory scheme of enforcement. See *Dandridge v. Williams*, 397 U.S. 471 (1970).

II.

AFFIRMING THE ACTION OF THE DISTRICT COURT WILL CAUSE UNTOLD CONFUSION IN THAT "WHEN DUE" UNDER THE STATUTE OF EVERY STATE WILL BECOME A POTENTIAL CONSTITUTIONAL QUESTION.

It may well be that under the language of the unemployment insurance statute of Maryland or another state

"when due" does not occur until a determination favorable to a claimant has become final by virtue of the passage of the statutory appeal period without an appeal having been noted. If the matter is left to a question of due process based upon interpretation of this language and of the amount of time that passes before benefits are paid, a much more disruptive mechanism is brought into play than that which would presumably be employed by the United States Secretary of Labor in carrying out his statutory mandate.

If the matter is to be determined on the basis of possible economic needs of the claimant, and we do not negate the importance of prompt payments, what about other cases wherein the initial determination is against the claimant and payment of benefits is postponed pending further adjudication?

We submit that the existing statutory structure and procedure is a fine compromise and if a shortening of appeal periods and decision-making is required, it ought to be accomplished within the techniques of statutory enforcement.

CONCLUSION

For the reasons set forth herein and those heretofore advanced in Maryland's amicus curiae brief filed in support of California's jurisdictional statement, it is respectfully submitted that the interlocutory judgment of the United States District Court for the Northern District of California preliminarily enjoining enforcement of Section 1335 of the California unemployment insurance law should be reversed and that the matter be remanded to the District Court for such other proceedings as the Court may deem appropriate and necessary for the further review of California's modus operandi of Section 1335 against the background of the

federal and state statutory schemes of enforcement with specific invitation of the views of the Secretary of Labor.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,

LOUIS B. PRICE,
Special Assistant Attorney General of Maryland,
For State of Maryland,
Amicus Curiae.

JAMES N. PHILLIPS,
General Counsel, Maryland Department of Employment Security.
Of Counsel.